

REMARKS

These Remarks are being made in conjunction with the filing of a Request for Continued Examination for the patent application identified above. Applicants herein present new argument in rebuttal to the rejections set forth in Final Office Action dated November 20, 2002.

In the Final Office Action dated November 20, 2002, claims 1-13, 15-17 and 22-51 are rejected under the judicially created doctrine of obviousness type double patenting over claims 1-49 of U.S. Patent 6,356,335 to Kim et al. (hereinafter "Kim"). Claims 1-7, 10, 11, and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,608,556 to Koma (hereinafter "Koma") in view of U.S. Patent No. 6,081,315 to Matsuyama et al. (hereinafter "Matsuyama"). Claims 8-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Koma in view of Matsuyama, as applied to claim 1, in view of U.S. Patent Application 2001/0043,305 in the name of Ohmura et al. (hereinafter "Ohmura").

The rejection of claims 1-13, 15-17 and 22-51 under the judicially created doctrine of obviousness type double patenting over claims 1-49 over Kim is respectfully traversed and reconsideration is requested.

Applicants wish to thank the Examiner for the indication of allowability of claims 12, 13, 15-17 and 23-51 if the double patenting rejection set forth in the Office Action were overcome. However, Applicants believe that the present invention is non-obvious over Kim for at least the reasons below.

In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is - does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the reference? See M.P.E.P. § 804(II)(B)(1). Further, among other things, obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is not patentably distinct from the subject

matter claimed in a commonly-owned reference. An obvious-type double patenting rejection is generally analogous to [a failure to meet] the nonobviousness requirement of 35 U.S.C. § 103. Therefore, any analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination. MPEP 804(II)(B)(1). Further, when considering whether the invention defined in a claim of an application is an obvious variation of the invention defined in the claim of the patent, the disclosure of the patent may not be used as prior art. MPEP § 804(II)(B)(1).

In rejecting claims 1-13, 15-17 and 22-51 of the present application over claims 1-49 of Kim, the Examiner states "Although the conflicting claims are not identical, they are not patentably distinct from each other because [they] substantially claim dielectric structures of various shapes with or without the use of electric field inducing windows to provide stable arrangement of liquid crystal molecules in a multi-domain LCD." Final Office Action at p. 1.

Independent claims 1 and 12 are allowable over the commonly-owned Kim patent in that each of these claims recites a combination of elements including, for example, "at least one or more additional structures formed at an end portion of the dielectric structure within the pixel region." None of the cited references including Kim, teaches or suggests at least this feature of the claimed invention. Applicants further submit claims 1-49 of Kim are silent at least as to the aforementioned combination of elements claimed in the present application. Accordingly, and after applying an analysis that parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination, Applicants respectfully submit claims 1 and 12 of the present application are not an obvious variation of the claimed invention in Kim. Accordingly, Applicants respectfully submit that claim 1 and claims 2-11 and 22, which depend from claim 1, and claim 12, and claims 13, 15-17, which depend from claim 12, are allowable over the cited references.

Independent claim 23 is allowable over the commonly-owned Kim patent in that this claim recites a combination of elements including, for example, "a dielectric structure in at least one of the pixel regions, the dielectric structure having two end portions and a middle portion, the end portions each having a U shape with an apex, the apexes connected to one another by the middle portion." None of the cited references including Kim, teaches or suggests at least this feature of the claimed invention. Applicants further submit claims 1-49 of Kim are silent at least as to the aforementioned combination of elements claimed in the present application. Accordingly, and after applying an analysis that parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination, Applicants respectfully submit claims 23 of the present application is not an obvious variation of the claimed invention in Kim. Accordingly, Applicants respectfully submit that claim 23 and claims 24-35, which depend from claim 23, are allowable over the cited references.

Independent claim 36 is allowable over the commonly-owned Kim patent in that this claim recites a combination of elements including, for example, "a common auxiliary electrode around each respective pixel region; at least one electric field induction window in a corner portion of at least one of the pixel regions." None of the cited references including Kim, teaches or suggests at least this feature of the claimed invention. Applicants further submit claims 1-49 of Kim are silent at least as to the aforementioned combination of elements claimed in the present application. Accordingly, and after applying an analysis that parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination, Applicants respectfully submit claim 36 of the present application is not an obvious variation of the claimed invention in Kim. Accordingly, Applicants respectfully submit that claim 36 and claims 37-40, which depend from claim 36, are allowable over the cited references.

Independent claim 41 is allowable over the commonly-owned Kim patent in that this claim recites a combination of elements including, for example, "a common auxiliary electrode within each pixel subregion, the common auxiliary electrode having a hexagonal shape." None of the cited references including Kim, teaches or suggests at least this feature of the claimed invention. Applicants further submit claims 1-49 of Kim are silent at least as to the aforementioned combination of elements claimed in the present application. Accordingly, and after applying an analysis that parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination, Applicants respectfully submit claim 41 of the present application is not an obvious variation of the claimed invention in Kim. Accordingly, Applicants respectfully submit that claim 41 and claims 42-51, which depend from claim 41, are allowable over the cited references.

With respect to the rejection of claims 1-7, 10, 11 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Koma in view of Matsuyama, and the rejection of claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Koma in view of Matsuyama in view of Ohmura, Applicants respectfully traverse these rejections for the reasons set forth below.

Independent claim 1 is allowable over the cited references, including Koma and Matsuyama, in that this claim recites a combination of elements including, for example, "a dielectric structure on a second substrate . . . [and] at least one or more additional structures formed at an end portion of the dielectric structure within the pixel region." None of the cited references, including Koma and Matsuyama, teaches or suggests at least this feature of the claimed invention. The Examiner admits in the Final Office Action that "Koma does not explicitly disclose at least one or more additional structures formed at an end portion of the dielectric structure within the pixel region." Final Office Action at p. 4. The Examiner then turns to Matsuyama to cure the deficiencies of the primary reference. However, Applicants

respectfully submit that the Examiner's extrapolation from the teachings of Matsuyama to reach the dielectric structure of the claimed invention is overreaching. That is, the Examiner declares that Matsuyama teaches "an aperture 12 (Applicant's dielectric structure) with Y shaped additional structures formed on both end portions of the dielectric structure within the pixel region to divide the pixel region into regions of different orientations. . . ." Final Office Action at p. 4. However, Applicants respectfully disagree with the Examiner's extrapolation that an aperture can teach or suggest a structure.

In the Advisory Action, the Examiner recognizes that his interpretation of the claims is broad, stating "It is respectfully pointed out that Applicant's arguments address alternate interpretations of the limitations which are interpreted more broadly by the Examiner." Advisory Action at p. 2. Clearly, the Examiner so broadly interprets the term "structure" that an "aperture" reads upon it. Applicants again respectfully submit that the Examiner has improperly interpreted the positive recitation of a structure to be so broad as to encompass a hole or aperture.

The Examiner then presumes the understanding of one of skill in the art that an aperture can teach or suggest a structure, stating in the Advisory Action that "in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably expect to draw therefrom." Advisory Action. Applicants refer the Examiner to MPEP 2111, which states. "The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those of skill in the art would reach." Applicants respectfully submit that one of skill in the art would not interpret the positively recited dielectric structure so broadly as to include an aperture.

Moreover, Section 2111.01 of the MPEP also states that "the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification."

Accordingly, Applicants respectfully submit the ordinary meaning of the term "structure" cannot be reasonably interpreted by one of skill in the art to include an "aperture."

In addition, further distinguishing the aperture 12 of Matsuyama from the dielectric structure recited by at least claim 1 of the present application is that the aperture 12 is formed in the pixel electrode on the lower substrate. Applicants submit that one of skill in the art would not construe the aperture formed in the pixel electrode on the lower substrate of Matsuyama to teach or suggest a dielectric structure formed on an upper substrate, as in recited by independent claim 1 of the present application.

Accordingly, Applicants respectfully submit that claim 1 and claims 2-7, 10, 11, and 22, which depend from claim 1, are allowable over the cited references.

With respect to the rejection of dependent claims 8 and 9, the Office Action cites Ohmura to cure the deficiencies of Koma and Matsuyama. However, Ohmura fails to teach or suggest "a dielectric structure on a second substrate . . . [and] at least one or more additional structures formed at an end portion of the dielectric structure within the pixel region." Therefore, Ohmura fails to teach or suggest all of the features of claims 8 and 9. Therefore, Applicants respectfully submit that claims 8 and 9 are allowable over the cited references.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

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